

Message Text

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ACTION EB-11

INFO OCT-01 IO-14 ISO-00 AF-10 ARA-16 EA-11 EUR-25 NEA-10

RSC-01 AGR-20 CEA-02 CIAE-00 COME-00 DODE-00 FRB-02

H-03 INR-10 INT-08 L-03 LAB-06 NSAE-00 NSC-07 PA-04

AID-20 CIEP-02 SS-20 STR-08 TAR-02 TRSE-00 USIA-15

PRS-01 SP-03 FEA-02 OMB-01 SWF-02 DRC-01 /241 W

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FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 4961

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PASS STR FOR FEKETEKUTY

E. O. 11652: NA

TAGS: ETRD, GATT

SUBJECT: GATT PRELIMINARY NOTE ON EXPORT RESTRICTIONS

1. GATT SECRETARIA (TUMLIR) PASSED US ON CONFIDENTIAL BASIS NOTE ON EXPORT RESTRICTIONS AND COPY IS BEING TRANSMITTED VIA INTERNATIONAL AIR MAIL. REPORT IS SUMMARIZED BELOW.

2. PURPOSE OF NOTE IS TO ANALYZE EXISTING GATT PROVISIONS FOR DEALING WITH EXPORT RESTRICTIONS AND TO EVALUATE POSSIBLE SOLUTIONS WITHIN FRAMEWORK OF MTN.

3. CONCLUSIONS REACHED IN NOTE MAY BE SUMMARIZED AS FOLLOWS:

(A) NEITHER REALISTIC NOR NECESSARY TO NEGOTIATE NEW SET OF RULES TO BE ADDED TO GATT;

(B) WITH ONE EXCEPTION, GATT APPEARS ADEQUATE TO DEAL WITH EXPORT RESTRICTIONS. EXCEPTION IS LACK OF SPECIFIC PROVISION FOR LIMITED OFFICIAL USE

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NEGOTIATING EXPORT BINDINGS, BUT NOTE ARGUES THAT ACCESS TO SUPPLIES

CAN BE ACHIEVED WITHIN GATT BY USUAL NEGOTIATIONS BASED ON RECIPROCITY.

(C) NUMBER OF EXISTING GATT RULES DEAL WITH EXPORT LIMITATIONS BUT HAVE NEVER BEEN APPLIED. DISCUSSIONS OF EXPORT RESTRICTIONS SHOULD BEGIN BY SEEKING WAYS TO ENFORCE RULES ALREADY EXISTING.

4. IMPORTANT POINTS DISCUSSED IN NOTE ARE:

(A) QUANTITATIVE RESTRICTIONS ON EXPORTS ARE NOW PERMITTED BY GATT UNDER: ARTICLE XI:2(A) (CRITICAL SHORTAGES); ARTICLE XX:& (CONSERVATION OF EXHAUSTIBLE NATURAL RESOURCES); ARTICLE XX:I (PART OF GOVERNMENT STABILIZATION PLANS); ARTICLE XX:J (DISTRIBUTION OF PRODUCTS IN SHORT SUPPLY). MAIN DIFFERENCE BETWEEN THESE PROVISIONS AND COUNTERPOINTS ON IMPORT RESTRICTIONS (ARTICLES XII AND XIX) ARE THAT FORMER DO NOT SPECIFICALLY PROVIDE FOR CONSULTATIONS TO JUSTIFY AND CONTROL THEIR APPLICATION.

(B) FOLLOWING EXPORT RESTRICTIONS WERE DECIDED IN 1950 GATT STUDY TO BE OUTSIDE THE EXCEPTIONS NOTED IN 4(A) ABOVE: (1) TO OBTAIN RELAXATION OF ANOTHER PARTY'S IMPORT RESTRICTIONS; (2) TO OBTAIN RELAXATION OF ANOTHER PARTY'S EXPORT RESTRICTIONS OR OTHERWISE TO OBTAIN AN ADVANTAGE IN PROCURING COMMODITIES FROM ANOTHER PARTY; (3) TO PROTECT A DOMESTIC FABRICATING INDUSTRY; (4) TO AVOID PRICE COMPETITION AMONG EXPORTERS.

(C) WITH RESPECT EXPORT TARIFFS, GATT PRINCIPLE APPLIES THAT TARIFFS MAY BE FREELY LEVIED UNLESS BOUND AND ARTICLE II PROVIDES FOR MFN TREATMENT TO BE APPLIED TO COMMERCE OF OTHER CONTRACTING PARTIES THEREBY ALLOWING EXPORT CONCESSIONS TO BE INCORPORATED INTO GATT. HOWEVER, ON BINDINGS GATT DEALS MORE SPECIFICALLY WITH IMPORT TARIFF BINDINGS (ARTICLE II:1(B)(C), ART. II:2(A), ART. II:4, ART. III) AND PROVIDES NO ASSURANCES AGAINST ENCROACHMENT OF EXPORT BINDINGS BY OTHER DUTIES, BORDER TAXES, MONOPOLIES, INTERNAL TAXES AND REGULATIONS. THIS IS NOT SERIOUS PROBLEM SINCE ANY NEGOTIATIONS OF EXPORT TAX BINDINGS WOULD NECESSARILY INCLUDE SUCH ASSURANCES.

(D) IN GENERAL, EVERY CONTRACTING PARTY HAS ACCESS TO MULTILATERAL CONSULTATIONS THROUGH ART. XXII AND THIS MECHANISM CAN LIMITED OFFICIAL USE

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BE USED WHERE CONSULTATIONS ARE NOT SPECIFICALLY PROVIDED FOR WITH RESPECT EXPORT LIMITATIONS.

(E) IF COUNTRIES HAVE ADDITIONAL REASONS OTHER THAN THOSE SPECIFIED IN ARTS. XI: 2(A) AND XX FOR SUSPENDING CONCESSIONS, A NOTE COULD BE ATTACHED TO EACH ITEM CONCERNED WHEN THE AGREEMENT IS NEGOTIATED. HOWEVER, IF SUCH NOTES BECOME TOO COMMON, EITHER NEGOTIATING PROBLEMS WILL RESULT OR ADDITIONAL GENERAL RULES WILL

BE NEEDED.

(F) ANOTHER APPROACH MIGHT BE FOR CONTRACTING PARTIES TO
AGREE ON DESIRABLE CODE OF CONDUCT. THIS CODE WOULD NOT BE
LEGALLY BINDING BUT COULD BE REFERRED TO BY A CONTRACTING PARTY IN
NOTE TO A SCHEDULED EXPORT CONCESSION. RULE WOULD THEN BECOME
BINDING IN THAT PARTICULAR CASE.DALE

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Draft Date: 02 APR 1974
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Disposition Approved on Date:
Disposition Authority: morefirh
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Disposition Comment: 25 YEAR REVIEW
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